

1 CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
2 PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
3 KELSEY J. HELLAND (CABN 298888)
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
6 Telephone: (415) 436-6488
7 FAX: (415) 436-6748
molly.friend@usdoj.gov

8 Attorneys for Defendant

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12
13 U.S. RIGHT TO KNOW,

14 Plaintiff,

15 v.

16 NATIONAL INSTITUTES OF HEALTH,

17 Defendant.

Case No. 4:25-cv-04490-DMR

**DEFENDANT'S ANSWER TO COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF**

1 Defendant National Institutes of Health (“NIH” or “Defendant”), by and through undersigned
2 counsel, respectfully submits the following Answer to Plaintiff’s Complaint filed on May 28, 2025 (ECF
3 No. 1) in this Freedom of Information Act, 5 U.S.C. § 552, (“FOIA”) action. All allegations not
4 specifically admitted are denied.

5 INTRODUCTION¹

6 1. This paragraph consists of Plaintiff’s characterization of this action and conclusions of law,
7 to which no response is required.

8 2. This paragraph consists of conclusions of law to which no response is required. To the
9 extent a response is required, Defendant denies the allegations in this paragraph.

10 3. The first sentence of this paragraph consists of Plaintiff’s characterization of this action to
11 which no response is required. As to the second sentence of this paragraph, Defendant lacks knowledge
12 or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that
13 basis denies them.

14 4. This paragraph consists of Plaintiff’s characterization of this action and conclusions of law
15 to which no response is required. To the extent a response is required, Defendant denies that Plaintiff is
16 entitled to any relief.

17 JURISDICTION AND VENUE

18 5. The first two sentences of this paragraph consist of conclusions of law to which no
19 response is required. As to the remaining sentences of this paragraph, Defendant lacks knowledge or
20 information sufficient to form a belief about the truth of the allegations therein, and on that basis denies
21 them. To the extent any further response is required, Defendant admits that venue is proper in this
22 judicial district.

23 6. This paragraph consists of conclusions of law to which no response is required. To the
24 extent a response is required, Defendant admits that the Court has subject matter jurisdiction, subject to
25 the terms and limitations of FOIA.

26
27
28 ¹ For ease of reference, Defendant refers to Plaintiff’s headings and titles, but to the extent those
headings could be construed to contain factual allegations, those allegations are denied.

INTRADISTRICT ASSIGNMENT

7. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant respectfully directs the Court to the cited provision and denies all allegations inconsistent therewith. With respect to the remaining allegations of paragraph 7 regarding where events and omissions occurred, Defendant lacks sufficient information or knowledge to form a belief as to the truth or falsity of those allegations, and on that basis denies them.

8. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies all allegations inconsistent therewith. The FOIA speaks for itself and is the best evidence of its contents.

9. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

10. This paragraph consists of conclusions of law regarding intradistrict assignment, to which no response is required. To the extent a response is required, Defendant respectfully directs the Court to the cited provision and denies all allegations inconsistent therewith.

PARTIES

11. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

12. Defendant NIH admits that it is a federal agency.

13. Defendant NIH admits that it qualifies as an “agency” under the FOIA, and that it is subject to the FOIA. Except as expressly admitted, Defendant NIH denies the allegations in this paragraph.

LEGAL FRAMEWORK

14. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies all allegations inconsistent therewith.

15. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies all allegations inconsistent therewith.

1 16. This paragraph consists of conclusions of law to which no response is required. To the
2 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
3 all allegations inconsistent therewith.

4 17. This paragraph consists of conclusions of law to which no response is required. To the
5 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
6 all allegations inconsistent therewith.

7 18. This paragraph consists of conclusions of law to which no response is required. To the
8 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
9 all allegations inconsistent therewith.

10 19. This paragraph consists of conclusions of law to which no response is required. To the
11 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
12 all allegations inconsistent therewith.

13 20. This paragraph consists of conclusions of law to which no response is required. To the
14 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
15 all allegations inconsistent therewith.

16 21. This paragraph consists of conclusions of law to which no response is required. To the
17 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
18 all allegations inconsistent therewith.

19 22. This paragraph consists of conclusions of law to which no response is required. To the
20 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
21 all allegations inconsistent therewith.

22 23. This paragraph consists of conclusions of law to which no response is required. To the
23 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
24 all allegations inconsistent therewith.

25 24. This paragraph consists of conclusions of law to which no response is required. To the
26 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
27 all allegations inconsistent therewith.

1 25. This paragraph consists of conclusions of law to which no response is required. To the
2 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
3 all allegations inconsistent therewith.

4 26. This paragraph consists of conclusions of law to which no response is required. To the
5 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
6 all allegations inconsistent therewith.

7 27. This paragraph consists of conclusions of law to which no response is required. To the
8 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
9 all allegations inconsistent therewith.

10 28. This paragraph consists of conclusions of law to which no response is required. To the
11 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
12 all allegations inconsistent therewith.

13 29. This paragraph consists of conclusions of law to which no response is required. To the
14 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
15 all allegations inconsistent therewith.

16 30. This paragraph consists of conclusions of law to which no response is required. To the
17 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
18 all allegations inconsistent therewith.

19 31. This paragraph consists of conclusions of law to which no response is required. To the
20 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
21 all allegations inconsistent therewith.

22 32. This paragraph consists of conclusions of law to which no response is required. To the
23 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
24 all allegations inconsistent therewith.

25 33. This paragraph consists of conclusions of law to which no response is required. To the
26 extent a response is required, Defendant respectfully directs the Court to the cited provision, and denies
27 all allegations inconsistent therewith.

STATEMENT OF OPERATIVE FACTS***FOIA Request One***

34. Defendant NIH admits that Plaintiff submitted a FOIA request to NIH on June 11, 2024, (“Request One”). The remaining allegations contained in Paragraph 34 contain Plaintiff’s description and characterization of this FOIA request, which speaks for itself and is the best evidence of its contents. Defendant respectfully refers the Court to Request One for a full and accurate statement of its contents. All allegations concerning its contents inconsistent therewith are denied.

35. Defendant NIH admits.

36. Defendant NIH admits.

37. Defendant NIH admits.

38. Defendant NIH denies. Plaintiff submitted their request via NIH’s FOIA mailbox, requiring NIH FOIA staff to manually enter their request into the electronic review platform.

39. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

40. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

41. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

42. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

43. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

44. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

45. Defendant NIH admits.

46. The allegations contained in Paragraph 46 contain Plaintiff’s description and characterization of correspondence dated August 5, 2024, which speaks for itself and is the best evidence of its contents. All allegations concerning its contents inconsistent therewith are denied.

1 47. Defendant NIH admits.

2 48. The allegations contained in Paragraph 48 contain Plaintiff's description and
3 characterization of correspondence dated October 9, 2024, which speaks for itself and is the best
4 evidence of its contents. All allegations concerning its contents inconsistent therewith are denied.

5 49. Defendant NIH admits.

6 50. The allegations contained in Paragraph 50 contain Plaintiff's description and
7 characterization of correspondence dated February 19, 2025, which speaks for itself and is the best
8 evidence of its contents. All allegations concerning its contents inconsistent therewith are denied.

9 51. Defendant NIH admits.

10 52. Defendant NIH admits.

11 53. Defendant NIH admits.

12 54. This paragraph consists of conclusions of law to which no response is required. To the
13 extent a response is required, Defendant NIH admits only that it has not provided a final determination
14 on Request One. Defendant denies the remaining allegations contained in this paragraph

15 55. This paragraph consists of conclusions of law to which no response is required. To the
16 extent a response is required, Defendant denies the allegations in this paragraph.

17 56. This paragraph consists of conclusions of law to which no response is required. To the
18 extent a response is required, Defendant denies the allegations in this paragraph.

19 57. This paragraph consists of conclusions of law to which no response is required. To the
20 extent a response is required, Defendant denies the allegations in this paragraph.

21 58. Defendant NIH admits only that it has not produced any records responsive to Request
22 One. Defendant denies the remaining allegations contained in this paragraph.

23 59. This paragraph consists of conclusions of law to which no response is required. To the
24 extent a response is required, Defendant denies the allegations in this paragraph.

25 60. Defendant lacks knowledge or information sufficient to form a belief about the truth of
26 the allegations in this paragraph, and on that basis denies them.

FOIA Request Two

61. Defendant NIH admits that Plaintiff submitted a second FOIA request to NIH on July 18, 2024 (“Request Two”). The remaining allegations contained in Paragraph 61 contain Plaintiff’s description and characterization of this FOIA request, which speaks for itself and is the best evidence of its contents. Defendant respectfully refers the Court to Request Two for a full and accurate statement of its contents. All allegations concerning its contents inconsistent therewith are denied.

62. Defendant NIH denies. The Plaintiff submitted to the NIH FOIA mailbox, which requires staff to manually enter the request into the electronic platform. Submission directly to the electronic platform occurs through a link on the NIH FOIA website.

63. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

64. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

65. Defendant NIH admits.

66. The allegations contained in Paragraph 66 contain Plaintiff’s description and characterization of correspondence dated October 5, 2024, which speaks for itself and is the best evidence of its contents. All allegations concerning its contents inconsistent therewith are denied.

67. Defendant NIH admits.

68. The allegations contained in Paragraph 68 contain Plaintiff’s description and characterization of correspondence dated October 27, 2024, which speaks for itself and is the best evidence of its contents. All allegations concerning its contents inconsistent therewith are denied.

69. Defendant NIH admits.

70. The allegations contained in Paragraph 70 contain Plaintiff’s description and characterization of correspondence dated February 19, 2025, which speaks for itself and is the best evidence of its contents. All allegations concerning its contents inconsistent therewith are denied.

71. Defendant NIH admits.

72. Defendant NIH admits.

73. Defendant NIH admits.

74. Defendant NIH admits only that it has not produced any records responsive to Request Two. Defendant denies the remaining allegations contained in this paragraph.

75. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

76. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

77. Defendant NIH admits.

78. Defendant NIH admits.

79. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

80. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT AND HHS REGULATIONS:

FAILURE TO PROVIDE TIMELY FINAL DETERMINATION

81. Defendant incorporates by reference responses to each allegation set forth above as if fully set forth herein.

82. The first sentence of this paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this first sentence. Defendant NIH admits the 20-day timeframe for response for Request One and Request Two have passed. Defendant denies the remaining allegations contained in Paragraph 82.

83. Defendant admits that Plaintiff has not received any communications to date from Defendant NIH regarding Request One and Request Two. Defendant denies the remaining allegations contained in Paragraph 83.

84. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph, and on that basis denies them. Defendant denies the remaining allegations contained in Paragraph 84.

85. Defendant denies the allegations in this paragraph.

86. Defendant denies the allegations in this paragraph.

COUNT II

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT:

UNLAWFUL WITHHOLDING OF NON-EXEMPT PUBLIC RECORDS

87. Defendant incorporates by reference responses to each allegation set forth above as if fully set forth herein.

88. The first sentence of this paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this first sentence. Defendant denies the remaining allegations contained in Paragraph 88.

89. Defendant denies the allegations in this paragraph.

90. This paragraph consists of conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

91. Defendant denies the allegations in this paragraph.

92. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and on that basis denies them.

93. Defendant denies the allegations in this paragraph.

94. Defendant denies the allegations in this paragraph.

COUNT III

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT:

FAILURE TO PROVIDE ESTIMATED DATE OF COMPLETION

95. Defendant incorporates by reference responses to each allegation set forth above as if fully set forth herein.

96. The allegations in the first sentence of this paragraph consist of conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in the first sentence of this paragraph. Defendant denies the remaining allegations contained in this paragraph.

97. Defendant admits the allegations in this paragraph.

1 98. Defendant lacks knowledge or information sufficient to form a belief about the truth of
2 the allegations in the first sentence of this paragraph, and on that basis denies them. Defendant denies
3 the remaining allegations contained in this paragraph.

4 99. Defendant denies the allegations in this paragraph.

5 **REQUEST FOR RELIEF**

6 The remaining allegations constitute Plaintiff's request for relief to which no response is required.
7 To the extent a response is required, Defendant denies that Plaintiff is entitled to the relief requested or to
8 any relief whatsoever. Defendant denies each and every allegation not specifically and expressly admitted
9 herein.

10 **AFFIRMATIVE DEFENSES**

11 In further response to the Complaint, Defendant raises the following defenses. Defendant
12 respectfully requests and reserves the right to amend, alter, and supplement the defenses contained in
13 this Answer as the facts and circumstances giving rise to the Complaint become known to Defendant
14 throughout the course of this litigation, including any defenses available pursuant to Federal Rules of
15 Civil Procedure 8 and 12.

16 **FIRST AFFIRMATIVE DEFENSE**

17 Plaintiff is not entitled to compel the production or release of information that is protected from
18 disclosure by one or more statutory exemptions or exclusions. 5 U.S.C. § 552(b). Disclosure of such
19 information is not required or permitted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Plaintiff is not entitled to declaratory relief and/or any other relief beyond what is provided for
22 under the FOIA. 5 U.S.C. § 552.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Plaintiff is neither eligible for nor entitled to attorney's fees or costs.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 At all times alleged in the Complaint, Defendant acted in good faith, with justification, and
27 pursuant to authority.
28

PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. Plaintiff takes nothing by its Complaint;
2. Defendant has judgment against Plaintiff;
3. Defendant be awarded its costs of suit; and
4. For such other and further relief as the Court may deem proper.

DATED: July 11, 2025

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ Kelsey J. Helland
KELSEY J. HELLAND
Assistant United States Attorney

Attorneys for Defendant